



5/18/09

14

TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Building Department

INTERDEPARTMENTAL COMMUNICATION

To: *Fire Department, Water District, Conservation Commission, Board of Health, Planning Department, Engineering Department, Transportation Advisory Committee, Municipal Properties, Design Review Board, Economic Development Committee, Sidewalk Committee, Building Department and Board of Selectmen*

Date: *May 7, 2009*

From: *Cheryl Frazier, Board of Appeals*

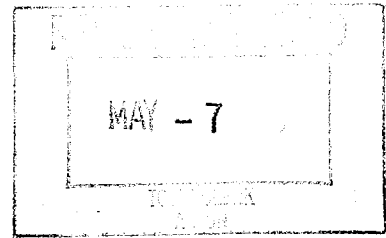
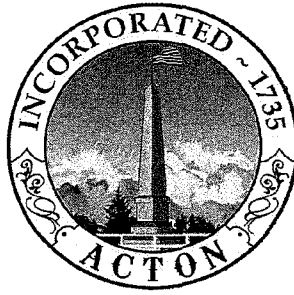
Subject: *Board of Appeals Hearing #09-02 245 Main Street*

*Learn and play
preschool*

I am in receipt of a Board of Appeals application for a **PETITION FOR REVIEW** to appeal the Decision of the Zoning Enforcement Officer set forth in a letter dated April 24, 2009 determining that a building permit may not be issued for the proposed expansion of a child care center on the premises located at 245 Main Street.

Please provide your comments to Scott Mutch in the Planning Department and cc; Cheryl Frazier, Board of Appeals Secretary no later than Tuesday, May 19th.

Upon completion of your review, if you no longer need the application and plans please return them to the Building Department.



Board of Appeals

NOTICE OF PUBLIC HEARING

The Board of Appeals will hold a Public Hearing on Monday, June 1, 2009 at 8:30 PM in the Faulkner Room of the Town Hall.

on the following petition:

Hearing # 09-02

**Learn & Play Preschool is requesting a
Petition for Review under Section 10.1.1 of the
Acton Zoning Bylaw to appeal the decision of the
Zoning Enforcement Officer set forth in a
letter dated April 24, 2009 determining that
a building permit may not be issued for the
proposed expansion of a child care center
on the premises located at 245 Main St.
Map G-3, Parcel 22.**

Petitioner must be present, or send authorized representative

BOARD OF APPEALS

Date Received
TOWN CLERK

RECEIVED & FILED

MAY - 6 2009

TOWN CLERK

Tom H. Taylor



TOWN OF ACTON
MASSACHUSETTS

BOARD OF APPEALS
(FORM 1)
PETITION FOR REVIEW

Date Received
BOARD OF APPEALS

By: _____

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(See (1) Below)

I/We hereby petition the Board of Appeals for a public hearing under Section 11.1.1 of the Zoning By-Law to review (a) the refusal of the Building Commissioner to grant a permit under Section 5.3.9 of the Zoning By-law to allow: (b) the refusal of the Building Commissioner to enforce the provisions of Section 5.3.9 of the Zoning By-Law as follows: (Strike out inapplicable language)

See Attached Narrative

Date of Building
Commissioner's Action _____

(1) Petition must be filed within 30 days of refusal date with copy of decision or order attached.

OFFICE USE ONLY

Seven 20 copies of petition? _____

Location map? ☒

Detailed plans? ☒

Additional Briefs? ☒ Letters

List of abutters and other interested parties? _____

Fee - \$100.00/1-25 abutters
\$125.00/26+ abutters? \$125.00

Next Hearing Date? _____ No _____

Respectfully submitted

Signed

Stacey Regan
(Petitioner)

Name

Stacey Regan Learn and Play

Address

245 Main St. Preschool

Phone #

978-263-8661

Signed

Stacey Regan
(Owner of Record)

Name

Stacey and Brian Regan

Address

Phone #

The Board of Appeals has the power and duty to hear and decide appeals (Section 11.1.1) from a decision of the Building Commissioner.

Revised 8/5/88



Planning Department

TOWN OF ACTON

472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

INTERDEPARTMENTAL COMMUNICATION

To: Mrs. Stacey Regan

Date: April 24, 2009

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: 245 Main Street – Expansion of Existing Child Care Facility: Learn & Play
Preschool

Dear Mrs. Regan,

This shall serve as the official Zoning Denial Letter for the building permit application submitted requesting review and approval for an expansion of your existing child care facility.

The subject property is located at 245 Main Street, Acton, MA and is identified as Lot 22 on Map G-3 of the Acton Assessors Map. It is located in an R-2 Residential zoning district. I am in receipt of and have reviewed a 5 page set of drawings submitted as part of the building permit application which were prepared by The Office of Michael Rosenfeld, Inc., Architects and dated March 24, 2009. The expansion proposal consists of converting an existing basement to useable child care space as well as a small addition to the front of the existing structure, with outdoor play areas for enrolled children, a 13 space parking lot, landscaping areas and the creation of a new driveway entrance for the subject property.

It is acknowledged that the proposed use is subject to special zoning status and protections afforded specifically to child care facilities under Massachusetts General Laws Chapter 40A, Section 3.

However, previous paragraph aside, the Town of Acton's Zoning Bylaw, Section 5.3.9 sets forth zoning standards governing child care facilities located in residential districts that the proposed facility would not meet. Additionally, the proposed expansion plan as currently designed, does not comply with the Parking Standards set forth in Section 6 of the Town of Acton's Zoning Bylaw. The Town of Acton's Zoning Enforcement Officer is an administrative position. In that position, I may not have the authority to resolve any conflicts which may exist between local zoning and the State Zoning Act, and in doing so

to waive the requirements of the Acton Zoning Bylaw. In any event, if I have such authority, I decline to exercise it here.

The zoning violations of the proposed site plan are identified and discussed as follows with the applicable Bylaw sections referenced:

Section 5.3.9 of the Zoning Bylaw specifically sets forth standards for child care facilities that are located in Residential Districts.

Minimum open space (not including outdoor play areas) – The minimum open space required is 35%. The proposed site plan indicates that 39.6% open space is being provided. However, it is unclear exactly how this number was calculated. The submission of shaded drawings which clearly show which areas are being included and which are not would be extremely helpful in understanding how this number is being calculated.

Maximum Floor Area Ratio (FAR) – The maximum permitted FAR is 0.10. The proposed site plan indicates a 0.14 FAR. The proposed FAR is only listed as a number on the plans at this time. It exceeds the maximum permitted FAR. The submission of shaded drawings which clearly show which areas are being included and which are not could be helpful in understanding how this number is being calculated.

Maximum Net Floor Area – The maximum permitted net floor area is 1,000 square feet. The proposed expansion plan indicates a total of approximately 3,184 square feet. The proposed total square footage is only listed as a number on the plans. It greatly exceeds the maximum permitted net floor area.

In addition to the above identified non-compliant Bylaw requirements, the following are additional dimensional requirements of the Town of Acton's Zoning Bylaw which are not in conformance.

Section 6.7.3 of the Bylaw states that *"each lot may have one access driveway through its frontage which shall be 24 feet wide"*. The submitted site plan indicates the introduction of a second entrance access drive for the property. The creation of a second access driveway would allow for each to function as one-way drives. However, Section 6.7.3 further states that *"access driveways for one-way traffic only may be a minimum of 14 feet wide"*. However, a Special Permit Granting Authority could waive this requirement based upon safety considerations.

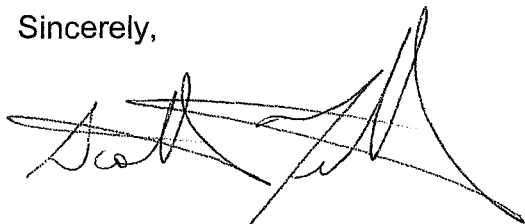
Section 6.7.6 (Perimeter Landscaping Requirements) of the Bylaw states that *"All parking lots/cells with more than five (5) spaces and all loading areas shall be bordered on all sides with a minimum of a ten (10) foot wide buffer strip on which shall be located and maintained appropriate landscaping of suitable type, density and height to effectively screen the parking area. The perimeter landscaping shall be in addition to any minimum OPEN SPACE or landscaped buffer area required elsewhere in this Bylaw."* Currently, there is no existing landscaping indicated on

the site plan and there is no proposed landscaping plan submitted. Section 6.7.8 of the Bylaw explains the Perimeter Landscaping requirements and what it should consist of. A complete landscaping plan should be submitted which is certified by and shows the seal of a Massachusetts Registered Landscape Architect as being in compliance with the Town of Acton's Zoning Bylaw.

Based upon the above noted items I determine herewith that the proposed expansion of Learn & Play Preschool at 245 Main Street is in violation of the Acton Zoning Bylaw. Accordingly, I will not sign-off on or approve a building permit. You may seek relief from this determination by filing an application to the Town of Acton's Zoning Board of Appeals requesting an appeal of this administrative decision of the Zoning Enforcement Officer.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 264-9636, Monday through Friday (except for holidays) between the hours of 8:00am and 5:00pm.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott A. Mutch', written over a horizontal line.

Scott A. Mutch
Zoning Enforcement Officer

Cc: Roland Bartl, Planning Director
Steven Ledoux, Town Manager
Town of Acton Building Department
Arthur Kreiger, Esq. (Town Counsel)
Learn & Play Preschool
The Office of Michael Rosenfeld, Inc., Architects



Town of Acton
 472 Main Street
 Acton, MA 01720
 Telephone (978) 264-9622
 Fax (978) 264-9630

Brian McMullen
 Assistant Assessor

Locus: 245 MAIN ST
Parcel: G3-22

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
10 HENNESSEY DR	F2-138	CONGREGATION BETH ELOHIM		PO BOX 142	ACTON	MA	01720
249 MAIN ST	F3-133	BUSCEMI VINCENT A		P.O. BOX 50	MAYNARD	MA	01754
247 MAIN ST	G3-2	FANG JENNY		247 MAIN ST	ACTON	MA	01720
3 BEVERLY RD	G3-23	CHAKRABORTY AMITAVA	CHAKRABORTY APARNA	3 BEVERLY RD	ACTON	MA	01720
240 MAIN ST	G3-24	GAO FUQUAN	LI HONG	240 MAIN ST	ACTON	MA	01720
243 MAIN ST	G3-25	PICKERING RONALD L	IRENE	243 MAIN ST	ACTON	MA	01720
5 BEVERLY RD	G3-26	SUN XUENING	LI YAQING	5 BEVERLY RD	ACTON	MA	01720
4 KELLEY RD	G3-28	OLAFSSON THOMAS	C/O ZIMMERMAN-DIAZ CARLOS + JULIE	10 TIDD CIR	LEXINGTON	MA	12420-1631
6 KELLEY RD	G3-29	SINCLAIR MARC J	SINCLAIR LYNN A	6 KELLEY RD	ACTON	MA	01720
7 BEVERLY RD	G3-30	COTTER JR NIAL J	COTTER GRACE A	7 BEVERLY RD	ACTON	MA	01720
1 KELLEY RD	G3-43	CHO JIN HAENG	HUR YOON JUNG	1 KELLEY RD	ACTON	MA	01720
3 KELLEY RD	G3-44	JEAN SCHMELZER		3 KELLEY RD	ACTON	MA	01720
13 BEVERLY RD	G3-46	KIRK CHARLES T R	ALICE E	13 BEVERLY RD	ACTON	MA	01720
9 BEVERLY RD	G3-47	DUBEAU-LEVESQUE TONI E		9 BEVERLY RD	ACTON	MA	01720
248 MAIN ST #1	F3-140-1	HINDS RAYNARD O	C/O SURESH MADHWAPATHY	248 MAIN ST #1	ACTON	MA	01720
248 MAIN ST #2	F3-140-2	BURGESS MICHAEL J	BURGESS LYNDIA QUINTANA	248 MAIN ST #2	ACTON	MA	01720
248 MAIN ST #3	F3-140-3	TIZI-UGDAL OMAR	TIZI-UGDAL NASSIMA	248 MAIN ST #3	ACTON	MA	01720
248 MAIN ST #4	F3-140-4	MADHWAPATHY SURESHR		248 MAIN ST #4	ACTON	MA	01720
246 MAIN ST #5	G3-1-5	YANG FAJUN	TANG SHUANG	246 MAIN ST #5	ACTON	MA	01720
246 MAIN ST #6	G3-1-6	WANG XIFANG		30 FRANCIS STREET	MALDEN	MA	02148
246 MAIN ST #7	G3-1-7	KLOSE CAROLINE S		246 MAIN ST #7	ACTON	MA	01720
246 MAIN ST #8	G3-1-8	BATCHELOR ERIC W	KLOPFENSTEIN SHARON E	246 MAIN ST #8	ACTON	MA	01720
246 MAIN ST #1	G3-21-1	SETTIPALLI ANAND	BANGALORE SHYAMALA S	246 MAIN ST #1	ACTON	MA	01720
246 MAIN ST #2	G3-21-2	LONG THOMAS R		246 MAIN ST	ACTON	MA	01720
246 MAIN ST #3	G3-21-3	OHA ALEKSANDER	OHA IRINA	246 MAIN ST #3	ACTON	MA	01720
246 MAIN ST #4	G3-21-4	KUHNE JASON A	C/O XIE LIN + WANG XIACKE	77 JOYCE LN	BOXBOROUGH	MA	01719

Brian McMullen
Assistant Assessor

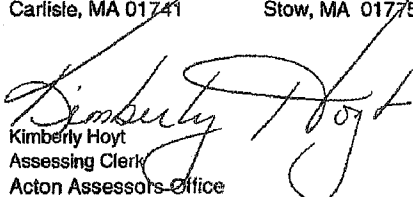
Locus: 245 MAIN ST
Parcel: G3-22

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
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Abutters and owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list.

**HEARING NOTICES FOR ALL SPECIAL PERMITS MUST BE SENT TO THE
PLANNING BOARD, TOWN HALL IN THE FOLLOWING TOWNS:**

Boxborough, MA 01729	Maynard, MA 01754	Concord, MA 01742	Littleton, MA 01460
Carlisle, MA 01741	Stow, MA 01775	Westford, MA 01886	Sudbury, MA 01776


Kimberly Hoyt
Assessing Clerk
Acton Assessors Office

3-Mar-09



March 24, 2009

Project Title: Learn & Play Preschool

Project Location: 245 Main Street, Acton MA 01720

Board of Appeals

Narrative for the Petition for Review

Learn & Play Pre-School is an existing one story house with a full basement. The R-1 structure has been modified and is currently used as a preschool facility only. There are two existing classrooms on the main level that are used for children ages 2 years 9 months to 5 years. The Owner would like to add two additional classrooms to the existing lower level for children ages 18 months to 2 years 9 months. The Owner currently leases space for this younger aged children program off site. Upon purchase of this property the Owner had plans to consolidate the two preschool programs into this one building on 245 Main Street.

Section 5.3.9 of the Acton Zoning Bylaws limits the net floor area of a child care facility in residential districts to 1,000 square feet. Learn & Play Preschool is within the R-2 zoning district however the facility is located one house away from the commercial zone of Kelley's Corner. Learn & Play Preschool is dedicated strictly towards educational use, classes are held during the day time on Monday thru Friday. There are no residents who reside in the building.

It is assumed that the zoning bylaw restriction indicated in section 5.3.9 was intended for daycare facilities with live in residents. The current facility meets all commercial code requirements and will continue to comply with the code as required. The owner is seeking approval from the Acton Board of Appeals to permit an additional 1000 s.f. of classroom space to the lower level for the toddler program and 150 s.f. of additional classroom space to the main level for the preschool program. Chapter 40A (Dover Amendment) allows for educational spaces such as this to be permitted within residential districts. We are hoping that you will be able to support our request.

Board of Appeals
Acton Town Hall
472 Main Street
Acton, MA 01720
March 23, 2009

To Whom It May Concern:

We are residence of 247 Main Street, directly next door to Learn and Play Preschool. We have been living here since 2005, one year after Learn and Play Preschool began. Since that time, we have not had any problems with them having a preschool in a residential zone. They have been cordial and we are in support of them being able to use their downstairs as classroom space. We do not anticipate that there will not be any issues in the future due to this additional space being used. We believe that education is important and quality childcare is essential especially during these tough economic times.

Sincerely,



Jenny and Bill Fang
247 Main Street

Board of Appeals
Acton Town Hall
472 Main Street
Acton, MA 01720
March 23, 2009

To Whom It May Concern:

We are writing this letter in reference to the request for Learn and Play Preschool at 245 Main Street in Acton to have use of their downstairs for childcare purposes.

We have been residents of Acton for over 50 years and have seen the town and Main Street go through many changes. Since 2004, Stacey and Brian Regan have owned and operated their preschool in a residential home at 245 Main Street. As their next door neighbors, we believe that this change has been a positive one and can say that they have not been any problem at all over the past five years. They have been friendly, respectful and have kept their school neat and tidy. In fact, we truly enjoy seeing the children playing outside and listening to their laughter. It has actually brought us some joy. We believe that by all means, Brian and Stacey should be allowed use of their whole house as a school. We believe that their school will continue to provide a much needed service to those parents in need of childcare and will not cause any problems in the future.

Sincerely,

Handwritten signatures of Ronald and Irene Pickering in cursive script.

Ronald and Irene Pickering
243 Main Street
Acton, MA